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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Implementation of Section 309(j)
of the Communications Act
-- Competitive Bidding for Commercial
Broadcast and Instructional Television Fixed
Service Licenses

MM Docket No. 97-234

Reexamination of the Policy Statement of Comparative Broadcast Hearings

GC Docket No. 92-52

Proposals of Reform the Commission's Comparative Hearing Process to Expedite the Resolution of Cases

GEN Docket No. 90-264

To: The Commission

**COMMENTS OF GRASS ROOTS
RADIO, INC. ON NOTICE OF
PROPOSED RULE MAKING**

Grass Roots Radio, Inc. (“Grass Roots”) hereby submits its Comments in response to the Commission’s Notice of Proposed Rule Making, FCC 97-397, released November 26, 1997, in the above-referenced proceeding (hereinafter “NPRM”).

1. Grass Roots is one of three remaining applicants (out of 12 applicants designated for hearing) for a new FM station on Channel 290C2 at Round Rock, Texas. The Grass Roots application was filed on July 14, 1988. The Hearing Designation Order, 6 FCC Rcd 277, was released on January 16, 1991. Hearing sessions were held in November 1991 and June 1992, and the record was closed on June 30, 1992. Order, FCC 92M-747 (released July 2, 1992). The case

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has been pending before the Presiding Administrative Law Judge for over five years as a result of the Commission's freeze on comparative hearing cases in the wake of Bechtel v. FCC, 957 F.2d 873 (D.C. Cir. 1992).

2. Pursuant to the Balanced Budget Act of 1997, Pub. L. No. 105-33, 111 Stat. 251 (1997), the NPRM proposes the use of auctions to decide among competing applications filed before July 1, 1997 for new commercial radio and television stations. Grass Roots is one of the applicants critically affected by the delay resulting from the Bechtel case as well as the new auction proposal and it offers these comments as a constructive means of smoothly accommodating the possible transition.

3. The NPRM first asks whether it should use comparative hearings for some or all of the pre-July 1, 1997 applications. However, the NPRM also observes that comparative hearings were lengthy, costly and unwieldy and that no standards presently exist to evaluate competing applicants. Therefore, a return to the comparative hearing process does not bode well for the initiation of broadcast service. If new comparative standards are adopted at this late date, applicants would have to be afforded an opportunity to amend their applications and any standards adopted would likely be the subject of appeals.

4. Nevertheless, the Commission should recognize that existing applicants who participated in comparative hearings spent a lot of time, money and effort in reliance upon the established system for awarding permits that had been in place for so many years. Accordingly, the Commission should permit all existing applicants who participated in comparative hearings by prosecuting their applications through the conclusion of the hearing to recoup their reimbursable expenses from the sums collected in an auction. Each applicant would have to document its expenses in a filing with the Commission and after the allowance of these expenses,

the government would receive all remaining sums. Such a procedure is only fair to those who have been disadvantaged by the delays that have occurred and the ex post facto change in procedures. Moreover, such a procedure would ameliorate the dilemma now confronting the Commission as to how to treat those applicants who participated in the hearing process but whose applications have been frozen.

5. With respect to pre-July 1, 1997 applicants who have been involved in the hearing process, the NPRM proposes that the ALJ, or the Commission (in cases pending before the Commission) would issue an order resolving any remaining hearing issues or other issues affecting the winning bidder's qualifications. Grass Roots submits that this proposal would be substantially enhanced by the following modification. As Chairman Kennard himself has acknowledged in a meeting with the Mass Media Practice Committee of the Federal Communications Bar Association while he was General Counsel of the FCC, financial availability and site issues have been the subject of extensive litigation yet have no practical value since an applicant with a construction permit can readily find financing and a site. Therefore, the auction process should not be bogged down by continued disputes as to financing or the availability of sites, particularly where the issue only concerned initial availability as opposed to current availability. Instead, the Commission should concern itself only with character-related and abuse of process issues that have been raised against applicants and resolve those disputes. The Commission has an obligation to ensure that its processes are not compromised and that applicants have the requisite character to be Commission licensees. Narrowing the scope of possible litigation and appeals will result in the earlier initiation of broadcast service to many communities as well as earlier payment of monies to the government.

6. The NPRM reflects the Commission's inclination to waive its policy against "White Knight" settlements involving the award of a permit to a non-applicant third party for settlements filed within the 180 day period following enactment of the Balanced Budget Act pursuant to Section 309(1)(3) of the Act. According to the NPRM, the Commission does not envision waiving its settlement rules after the 180-day period (and prior to any auction) except in extraordinary circumstances.

7. Grass Roots submits that the Commission's interpretation of the Balanced Budget Act is correct. However, Grass Roots is concerned about possible misuse of the Commission's processes. Grass Roots understands that certain of the Commission's Personal Communication Services ("PCS") auctions are under investigation by federal agencies for possible collusion and bid-rigging. Permitting mutually exclusive applicants to merge in an auction encourages such collusion and bid-rigging. Moreover, such mergers are likely to minimize the financial return to the government. Since prior Commission auction procedures have been the subject of gamesmanship, the Commission should make certain that the auction procedures it implements for broadcast facilities are not undermined.

In sum, for the reasons set forth above, Grass Roots Radio, Inc. submits that the Commission should permit applicants in comparative hearing cases to obtain their reimbursable expenses out of the auction proceeds; should limit the scope of challenges to the winning bidder to those pertaining to character and abuse of the Commission's processes, and should take appropriate steps to protect the integrity of its auctions.

Respectfully submitted,

GRASS ROOTS RADIO, INC.

BY:



Jim J. Hill

CERTIFICATE OF SERVICE

I, Jim J. Hill, President of Grass Roots Radio, Inc., do hereby certify that true copies of the foregoing **"COMMENTS OF GRASS ROOTS RADIO, INC. ON NOTICE OF PROPOSED RULE MAKING"** was served this 26th day of January, 1998, by first U.S. class mail, to the following:

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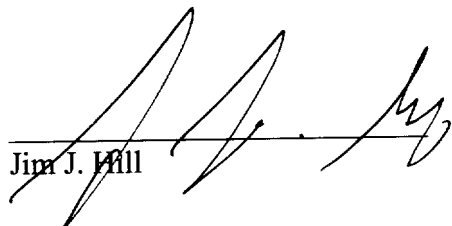
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